

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**January 29, 2003**

**IN RE:**

**PETITION OF ON-SITE SYSTEMS, INC. TO AMEND ITS  
CERTIFICATE OF CONVENIENCE AND NECESSITY**

)  
)  
)  
)

**DOCKET NO.  
02-00477**

---

**ORDER APPROVING PETITION OF ON-SITE SYSTEMS, INC.  
TO AMEND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

---

This matter came before Chairman Sara Kyle, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 18, 2002 and at a regularly scheduled Authority Conference held on December 2, 2002 to consider the Petition (the "Petition") of On-Site Systems, Inc. ("On-Site") to amend its Certificate of Public Convenience and Necessity ("CCN") to expand its service area to include an area known as Stewart County West in Stewart County, Tennessee.

**Legal Standard for Granting CCN**

On-Site's Petition was made pursuant to and was considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator

thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

### **Background**

On April 4, 1994, On-Site received a CCN in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, On-Site has been granted approval to expand its service territory to include other areas in Tennessee.

### **Petition to Amend CCN**

On April 26, 2002, On-Site filed its Petition to amend its CCN to expand its service area to include Stewart County West. A map showing the area to which On-Site proposes to extend service is attached to its Petition. On-Site filed a rate schedule with its Petition in this docket which states that residential rates for Stewart County West will be as follows:

Total monthly charge	\$35.11
Non-payment fee	5% of monthly charge
Disconnection fee	\$10
Reconnection fee	\$15
Returned check fee	\$20
Access fee	\$84/year

This rate schedule comports with the rate schedule for On-Site approved by the Authority in Docket No. 99-00393. In addition, On-Site filed commercial rate schedules in this docket which comport with the rate adjustment for commercial customers approved by the Authority in Docket No. 00-01128.<sup>1</sup>

In its Petition, On-Site states that neither Stewart County nor the Town of Dover has the desire or ability to provide wastewater service to Stewart County West. With its Petition, On-Site submitted a letter dated March 11, 2002 from David G. Wallace, Stewart County Executive,

---

<sup>1</sup> See *Order Approving Amendment of On-Site Systems, Inc.'s Certificate of Public Convenience and Necessity, Franchise, and Commercial Rate Adjustment*, Docket No. 00-01128 (October 23, 2001).

stating that Stewart County does not provide sewer service.

In addition, On-Site submitted a letter dated April 18, 2002 from James H. Scurlock, City Administrator for the Town of Dover, in which Mr. Scurlock stated that the Town did not object to On-Site's providing service to Cindy's Restaurant, an existing customer located in the proposed service area. However, Mr. Scurlock also stated:

The Town of Dover does not plan to relinquish any rights for sewer service outside the parcel on which Cindy's Restaurant is located at this time.

Any other requests for sewer service within the highlighted area should be handled on a case by case basis with the Town. If the Town cannot or will not provide sewer service to the request [sic] parcel, then this parcel will be considered for release by the Town for sewer service by others.

If On-Site Service, Inc. has a plan and funding in place to provide sewer service for customers within the area highlighted on your map, then the Town of Dover would reconsider its position as stated in this letter.<sup>2</sup>

On-Site also submitted with its Petition a letter dated April 26, 2002 from Charles Pickney, Jr., president of On-Site, to David Waddell, then Executive Secretary of the Authority, referring to Mr. Scurlock's April 18, 2002 letter and stating that the proposed service area is outside the twenty-year urban growth boundary for the Town of Dover. On-Site's April 26, 2002 letter further asserted that "the city has no claim on areas outside of their growth boundary and according to state guidelines; they have no intention of providing city services to the proposed area over the next twenty years."<sup>3</sup> On-Site also submitted a letter dated June 12, 2002 from Mr. Pickney to Mr. Scurlock, in which Mr. Pickney stated that the proposed service area is outside the Town of Dover's twenty-year urban growth boundary.

The Directors of this voting panel considered On-Site's Petition at the regularly scheduled Authority Conference held on November 18, 2002. The Directors heard statements from Mr. Pickney and from Mr. Gene C. Koonce, Jr., an engineer who stated that he was asked

---

<sup>2</sup> Letter from James H. Scurlock to Charles Pickney, Jr., April 18, 2002.

<sup>3</sup> Letter from Charles Pickney, Jr. to David Waddell, April 26, 2002.

to attend the Authority Conference in the place of Mr. Scurlock. Mr. Koonce stated that the Town of Dover is not opposed to sewer service being provided to the proposed service area but is opposed to the granting of an asset in the form of approval of the proposed service area without a plan to provide sewer service in the immediate future. Mr. Koonce stated that the Town would like for the Authority to defer its consideration of On-Site's Petition until On-Site has presented a plan as to how and when On-Site intended to provide service to the proposed area.

Mr. Pickney stated that the proposed area is outside of the twenty-year urban growth boundary for the Town of Dover. He questioned whether the Town had a legal basis for claiming the exclusive right to serve in the proposed area. Mr. Koonce stated that the proposed area is outside the Town's twenty-year urban growth boundary but noted that the Town could amend its urban growth boundary. Mr. Koonce stated that the Town is providing sewer service to an area adjacent to the proposed service area.

At the conclusion of remarks on this matter at the November 18, 2002 Authority Conference, the Directors of this panel, noting that the record established that the Town of Dover did not object to an expansion of On-Site's CCN to include Cindy's Restaurant, voted unanimously to grant On-Site's Petition as to Cindy's Restaurant. The Directors then opted unanimously to defer further consideration of the remainder of the Petition to allow the Town of Dover a full opportunity to state a legal basis for its opposition to the Petition as it relates to the proposed area other than Cindy's Restaurant.

On November 19, 2002, the Authority received a letter dated November 18, 2002 from the Honorable Dunning Cheatham, Mayor of Dover. Mayor Cheatham stated that the Town "is

not opposed to residents of Stewart County from having the availability of sanitary sewer service.”<sup>4</sup> Mayor Cheatham further stated:

Our concern with this petition is there appears to be no plans to provide sewer service to the residents in the expanded service area by On-Site Systems, Inc. in the foreseeable future. The State of Tennessee would be granting an asset to a private corporation without providing the intended service. It is our position the State should grant an expansion of service area for only those areas for which the service will be provided or a written plan is submitted to the State and appropriate local governing body which provides a timetable for this service. If this service is not provided in the timeframe submitted, then this asset should be rescinded. Otherwise, this action may prevent the Town of Dover from extending sewer service to annexed residents living in this service area in the future.<sup>5</sup>

On November 20, 2002, the Authority sent a letter by facsimile and regular mail to Mayor Cheatham, informing him that the Authority would again consider On-Site’s Petition at the regularly scheduled Authority Conference on December 2, 2002. The Authority’s November 20, 2002 letter further stated that if the Town of Dover intended to oppose On-Site’s Petition, the Town should file a petition to intervene in this docket within seven (7) days of the December 2, 2002 Authority Conference.

The voting panel again considered On-Site’s Petition at the December 2, 2002 Authority Conference. The Town of Dover did not file a petition to intervene in this matter. No person appeared on behalf of the Town at the December 2, 2002 Authority Conference.

Upon consideration of the Petition and the entire record, the Authority finds that the present and future public convenience and necessity require the approval of On-Site’s Petition. Pursuant to Tenn. Code Ann. § 65-4-201, the Directors of this voting panel voted unanimously at the December 2, 2002 Authority Conference to grant On-Site’s Petition as to the remainder of the service area proposed in the Petition.

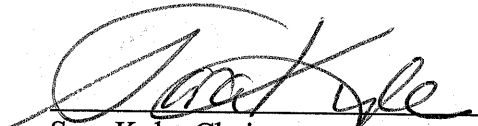
---

<sup>4</sup> Letter from the Honorable Dunning Cheatham to Chairman Sara Kyle, November 18, 2002, p. 1.

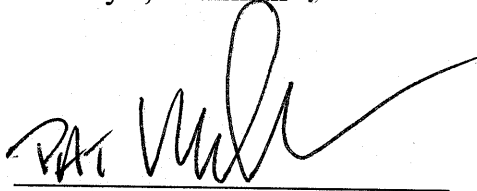
<sup>5</sup> *Id.*, pp. 1-2.

**IT IS THEREFORE ORDERED THAT:**

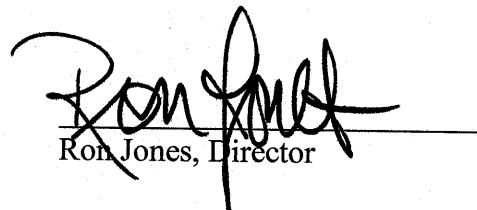
1. The Petition of On-Site Systems, Inc. to amend its Certificate of Public Convenience and Necessity to expand its service area to include an area known as Stewart County West in Stewart County, Tennessee, as shown in the map attached to the Petition, is approved.
2. On-Site's rates for wastewater service to Stewart County West shall be as listed in the rate schedule filed with On-Site's Petition and as set forth in this Order.



Sara Kyle, Chairman



Pat Miller, Director



Ron Jones, Director